Supreme Court, U.S.
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No. 10- 10-561

IN THE

Supreme Court of the United States

SAMUEL Y. SUNG and YOUNG HEE SUNG, as husband and wife; MORNING STAR WORLD MISSION,

Petitioners,

v.

TAE T. CHOI; INMIN KIM and MYUNG SOON HILLTON, as representatives of the NEW HOPE CHRISTIAN REFORMED CHURCH OF TACOMA, f/k/a NEW HOPE CHRISTIAN REFORMED CHURCH; and REVEREND TIMOTHY TOWSET, as representative of the CLASSIS PACIFICNORTHWEST OF THE CHRISTIAN REFORMED CHURCH OF NORTH AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Establishment Clause of the First Amendment, courts may not become entangled in ecclesiastical matters. However, courts attempting to resolve church property disputes using this Court's compulsory deference doctrine in *Watson v. Jones* are often required to resolve doctrinal and church government disputes. Should the compulsory deference doctrine be abandoned in favor of the neutral principles of law method described by this Court in *Jones v. Wolf*?

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OPINIONS BELOW

The opinion of the Court of Appeals of Washington is reported at 225 P.3d 425. It is reprinted at Appendix A. The unreported Findings of Fact and Conclusions of Law dated March 31, 2008 of the Superior Court of Washington For Pierce County is reprinted at Appendix B.

JURISDICTION

The Supreme Court of Washington declined to review the opinion of the Court of Appeals on July 7, 2010 (Appendix C). This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....

U.S.C.A. Const. Amend. I (in relevant part).

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.C.A. Const. Amend. XVI § 1 (in relevant part).

Statutory Provisions

None applicable.

STATEMENT OF THE CASE

In the mid-1980's, Korean immigrant Reverend Samuel Sung founded and incorporated the New Hope Christian Reformed Church ("New Hope CRC")[1] in the State of Washington. New Hope CRC was a non-profit corporation and operated according to its own bylaws, which were initially executed in 1987. The New Hope CRC bylaws blended the rules of the Korean Presbyterian denomination in which Rev. Sung was originally ordained, and the Christian Reformed Church of North America ("CRCNA").

When New Hope CRC was founded in 1985, Rev. Sung began the process of admitting the church into the CRCNA. Aside from an unsecured loan the church has largely repaid, New Hope CRC never received any financial assistance from the CRCNA. Also in 1986, New Hope CRC purchased real property in SeaTac, Washington. The Sung family contributed $20,000 to purchase the property. New Hope CRC was not affiliated with the CRCNA until 1991, when Rev. Sung signed a form of subscription. New Hope CRC agreed to abide by CRCNA religious doctrine in ministerial teaching, and agreed to defer to the CRCNA on ecclesiastical matters of religious teaching and doctrine. In non-ecclesiastical matters, such as running church business

1. The church was originally called "Hope CRC" until Rev. Sung reincorporated it in 1997, renaming it "New Hope CRC").

and owning real property, New Hope CRC always operated according its own bylaws, without input or oversight from the CRCNA. New Hope CRC bylaws contained qualifications for ministry positions, such as elder and deacon.

Rev. Sung and members of his family devoted their lives and financial resources to maintaining New Hope CRC. For many years, the Sung family paid the mortgage on the church property. From 1985 - 1995, New Hope CRC was not fully supported by the congregation. Rev. Sung, his wife, and three children all worked to subsidize it.

In 1997, New Hope CRC sold its SeaTac property and purchased real property in Tacoma, which is the subject of this action. In 2000, the New Hope CRC non-profit corporation was administratively dissolved by the Secretary of State.

In 2002, Rev. Sung decided to retire from the New Hope CRC ministry, and he began looking for someone to replace him as its Senior Pastor. Consistent with his course of dealing throughout the prior 18 years, Rev. Sung did not look to the CRCNA for a replacement minister, nor did he consult the ecclesiastical rules and regulations of the CRCNA. He acted independently. In October 2002, Rev. Sung signed an agreement with Rev. Byung Kim to replace Rev. Sung as Senior Pastor of New Hope CRC. Rev. Kim was an ordained minister from another denomination, the Presbyterian Church of the USA ("PCUSA"). Rev. Kim also had his own congregation with separate church members and leaders at another church known as the Joo-Shin Church. Among the leadership of the Joo-Shin church at that time were In Min Kim and Myung Soon Hinton.

After the October 2002 agreement between Rev. Kim and Rev. Sung was executed, Rev. Kim began to conduct religious services at New Hope CRC. One year later, without becoming ordained in the CRCNA, he abandoned New Hope CRC.

In November 2003, Tae Y. Choi joined New Hope CRC. Choi had been active in leadership in a variety of denominations, but he was never a member of the CRCNA. In January 2004, while Rev. Sung was away, Choi was installed by the leadership of Rev. Kim's Joo-Shin congregation as a church elder. Choi did not qualify for an elder position under the New Hope CRC bylaws. Choi, Kim, and Hinton were never elected to corporate board or officer positions within the New Hope CRC non-profit corporation, which had been dissolved in 2000.

When Rev. Sung returned to Tacoma in December 2004, he resumed his position as Senior Pastor of the congregation, and began the process of selecting a replacement. Choi, Kim and Hinton rejected Rev. Sung's return as pastor, and began looking to other denominations for a replacement. Rev. Sung then ejected the Joo Shin congregation from the Tacoma property.

Because the property belonged to the New Hope CRC corporation which had been administratively dissolved in 2000, in March 2005, Rev. Sung sought the consent of the members of the original New Hope CRC congregation transfer ownership. New Hope CRC voted unanimously to deed title to the Tacoma property to Morning Star World Mission, an existing corporation which could continue New Hope CRC church. Rev. Sung executed and recorded the quit claim deed on April 7, 2005.

After learning that the quit claim deed had been recorded, Choi attempted to claim ownership of the New Hope CRC corporation. He filed a business license application, claiming to be 90% owner of the dissolved corporation. He filed for reinstatement of the non-profit corporation, of which he had never been an owner, officer, or member. He also filed using the same state registration number that had been assigned to the dissolved New Hope CRC. Choi called his corporation the New Hope Christian Reformed Church of Tacoma. The following year, Choi and the other respondents filed suit to quiet title to the Tacoma property at issue, obtaining the support of an unincorporated subsidiary of the CRCNA, known as the Classis Pacific Northwest ("Classis"). Together they claimed that the Tacoma property, purchased by Rev. Sung and the original New Hope CRC congregation, legally belonged to the CRCNA.

Within the CRCNA, individual churches, such as New Hope CRC, operate according to their own bylaws and articles of incorporation. Individual churches hold title to church property, and the CRCNA is in no way involved in transfers of real property by individual churches, or any administrative affairs of individual churches. The governing body of every individual CRCNA church is selected at the local level. The CRCNA does not decide who governs local churches. Consistent with these facts, the trial court found that the CRCNA conducted itself as a congregational, rather than hierarchical, church organization. Appendix at 27a.

Nevertheless, it awarded the property to the CRNCA and the Joo-Sin congregation. *Id.* at 31a. The trial court made a number of doctrinal findings. The trial court found that "there was no evidence presented that the Classis decision on these matters was contrary to the Word of God." *Id.* at 26a. It also found that Rev. Sung's independent church governance was "largely not harmful to the general church function." *Id.* at 23a. It found that "the Reformation, which gave birth to the CRCNA, was largely about governance." *Id.* at 29a.

Rev. Sung appealed the trial court's judgment to the Washington State Court of Appeals. The Court of Appeals affirmed, and like the trial court, made findings regarding ecclesiastical matters. For example, the court found that "Although the PCUSA is a different denomination than the CRCNA, the record demonstrates that Presbyterian and Christian Reformed Churches share common historical roots and are fairly similar in terms of doctrine and governance." *Id.* at 428 n.3. The court found that "The Classis, *following church policy and rules of governance*, directed the Classis Interim Committee ("CIC") to investigate the dispute between Sung and the ousted congregation." *Id.* at 429. The court did not explain how it knew that the Classis had followed church policy and governance in so doing. The court also noted that

> To be affiliated with the CRCNA, a church must agree to certain rules in the "Church Order and Rules for Synodical Procedure." One rule requires the Classis or Synod (the assembly above the Classis) to resolve disputes concerning ecclesiastical matters.

> The churches must agree that the Classis or Synod rulings are binding on them, *unless those rulings "conflict with the Word of God."*

Id. (emphasis added). The court concluded that the Classis' ruling was binding on Sung, but did not explain how determined that it did not conflict with the Word of God. *Id.* at 433.

Rev. Sung petitioned the Washington Supreme Court for review of the Court of Appeals' decision. Review was denied on July 7, 2010.

REASONS FOR GRANTING THE WRIT

A. Summary of Reasons

Under Supreme Court Rule 10(c), this Court has jurisdiction and discretion to review a case if "a state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

This Court has offered states multiple methods for resolving disputes over church property. The two main methods are the "compulsory deference" doctrine in *Watson v. Jones*, 80 U.S. 679 (1871), which requires courts to determine the structure, policy, and government of a church, and the "neutral principles" approach of *Jones v. Wolf*, 443 U.S. 595 (1979), which requires courts only to apply the law as it would apply to any other voluntary non-religious organization.

Regardless of how courts approach these disputes, one clear rule has endured: courts must always avoid becoming entangled in ecclesiastical matters. They must not allow a purported civil dispute over property to become a dispute over church doctrine, government, policy, or practice. Civil courts have no place deciding such issues.

Yet the compulsory deference doctrine – adopted by this Court in 1871 and still in use by a handful of states today – *requires* courts to delve into matters of church doctrine, practice, and government in order to determine whether the local church is independent, or is subservient to the ecclesiastical decisions of a higher church body.

The Washington State Court of Appeals here became deeply entangled in ecclesiastical matters in trying to apply the compulsory deference doctrine. It ruled, directly or by implication, on matters relating to ecclesiastical doctrine, policy, practice and government, which this Court has forbidden. Most egregious is the Court of Appeals acknowledgement that the ruling of the Classis was only binding on Sung if it did not conflict with the Word of God, followed by its finding that he was in fact bound by it. *Choi v. Sung*, 225 P.3d 425, 433 (2010).

The Washington court is hardly the first to encounter this problem. Other states attempting to apply the compulsory deference doctrine have had similar entanglements, with unconstitutional results.

This case meets the test of Rule 10(c). The court's decision here amply demonstrates that it is time for this

Court to abandon *Watson* and require states to embrace the neutral principles approach to church property disputes.

B. The Washington Supreme Court's Decision Interprets an Important Issue of Federal Law That Conflicts With a Decision of This Court

1. History of this Court's Key Rulings Regarding State Involvement in Church Property Disputes

The First Amendment and the ecclesiastical abstention doctrine preclude civil courts from inquiring into ecclesiastical matters.[2] Ecclesiastical matters include "a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Watson*, 80 U.S. at 733.

In 1871 this Court in *Watson* first addressed a dispute over ownership of church property stemming from a rift between two religious factions of a local church. In analyzing the dispute, this Court distinguished between churches with congregational or independent organizations, governed solely within themselves, and those where a congregation was part of a larger, structured denomination. When property disputes arose in hierarchical churches, this Court adopted an approach deferential to the hierarchy, explaining:

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2. The First Amendment applies to the states by its incorporation into the due process clause of the Fourteenth Amendment. U.S. Const. amend. XIV; *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 876-77 (1990).

> [W]e think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Watson, 80 U.S. at 727.

Although in the early years of the 20th century courts dabbled in exceptions to the *Watson* deference approach for "fraud, collusion, or arbitrariness," (*see, e.g., Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 14 (1929)), the *Watson* approach was not substantially modified until this Court's decision in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) ("*Hull*"). *Hull* involved the withdrawal of two local churches from the Presbyterian church, because the local organizations believed that certain actions of the general church were departures from the doctrine and practice in force when they became affiliated with the church. *Id.* at 442. The local churches denounced the jurisdiction of the general church, and an administrative commission appointed by the general church (after it failed to broker a reconciliation) acknowledged the withdrawal of the local

church and took over the local churches' property. *Id.* The local churches did not appeal to higher church tribunals but instead filed a civil suit in the Georgia courts. *Id.* at 423. The Supreme Court of Georgia affirmed a jury verdict in favor of the local churches that was based on the theory that Georgia law implied a trust of local church property for the benefit of the general church on the sole condition that the general church adhere to tenets of faith existing at the time of affiliation by the local churches. *Id.* at 443-44.

This Court reversed, reasoning that the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. The First Amendment forbids civil courts from playing such a role. *Id.* at 450.

In *Hull* – which is strikingly similar to the present case – this Court laid the foundation for a competing view of the proper role of civil courts in resolving church property disputes. It found that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. *Id.* at 449. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without establishing churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious

doctrine and practice. *Id.* If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. *Id.*

In a concurring opinion in *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg,* 396 U.S. 367 (1970), Justice Brennan elaborated on this Court's decision in *Hull*, noting that "a State may adopt any one of various approaches for settling church property disputes *so long as it involves no consideration of doctrinal matters*, whether the ritual and liturgy of worship or tenets of faith." *Id.* at 368. He noted that courts could adopt the *Watson* approach, enforcing property decisions made within a hierarchical church by the highest authority within the church that ruled on the dispute. *Id.* However, citing *Hull* he noted that

> [n]eutral principles of law, developed for use in all property disputes provide another means for resolving litigation over religious property. Under the "formal title" doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws. Again, however, general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues. For example, provisions in deeds or in a denomination's constitution for the reversion of local church property to the general church, if conditioned upon a finding of departure from doctrine, could not be civilly enforced.

Id. at 370 (quotations and citations omitted). As a third alternative, Justice Brennan suggested that states pass "special state statutes governing church property arrangements in a manner that precludes state interference in doctrine." *Id.*

Jones is the latest decision of this Court to offer guidance to state courts in resolving church property disputes, although it is now over thirty years old. This Court expressly found that the First Amendment does not require the states to adopt a rule of compulsory deference to religious authorities, and held that "a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute." *Id.* at 596. The discussion in *Jones* suggests that while states retain the leeway to implement the deference approach of *Watson*, the neutral principles approach is the preferred approach.

> The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties.

Id. at 603. Thus, this Court established that the best way to avoid ecclesiastical entanglement is for states to adopt the neutral principles approach.

2. Judicial Treatment of Church Property Disputes Is Now a Patchwork of Rules and Tests

Under *Jones* and *Hull*, state courts are permitted to adopt either the neutral principles approach or the compulsory deference approach. This has resulted in a patchwork of rules across the jurisdictions.

Alabama, Alaska, Arizona, California, Colorado, Delaware, Georgia, Illinois, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New York, Pennsylvania, South Dakota, Tennessee, and Virginia have adopted the *Jones* and *Hull* neutral principles doctrine.[3]

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3. *African Methodist Episcopal Zion Church, Ex parte*, 860 So.2d 870 (Ala. 2003); *St. Paul Church, Inc. v. Board of Trustees of Alaska Missionary Conference of United Methodist Church, Inc.*, 145 P.3d 541 (Ak. 2006); *Skelton v. Word Chapel, Inc.*, 637 P.2d 753 (Ariz. App. Div. 1 1981); *In re Episcopal Church Cases*, 198 P.3d 66 (2009); *Bishop and Diocese of Colorado v. Mote*, 716 P.2d 85 (Colo. 1986); *East Lake Methodist Episcopal Church, Inc. v. Trustees of Peninsula-Delaware Annual Conference of United Methodist Church, Inc.*, 731 A.2d 798 (Del. 1999); *First Evangelical Methodist Church of Lafayette v. Clinton*, 360 S.E.2d 584 (Ga. 1987); *York v. First Presbyterian Church of Anna*, 474 N.E.2d 716 (Ill. 5th Dist. 1984); *African Methodist Episcopal Church, Inc. v. Stewart*, 28 So. 3d 1044 (La. Ct. App. 1st Cir. 2009); *Mt. Olive African Methodist Episcopal Church of Fruitland, Inc. v. Board of Incorporators of African Methodist Episcopal Church Inc.*, 703 A.2d 194 (Md. 1997); *Piletich v. Deretich*, 328 N.W.2d 696 (Minn. 1982); *Church of God*

(Cont'd)

Arkansas, Florida, Indiana, Iowa, Kentucky, Michigan, Nevada, New Jersey, North Dakota, Ohio, Oklahoma, South Carolina, Texas, Washington, and West Virginia adhere to the *Watson* compulsory deference approach.[4]

(Cont'd)

Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc., 716 So. 2d 200 (Miss. 1998); *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465 (Mo. 1984); *Geiss v. Trinity Lutheran Church Congregation*, 230 N.W. 658, 660, 119 Neb. 745, 745 (Neb. May 09, 1930). *Board of Managers of Diocesan Missionary v. Church of Holy Comforter*, 628 N.Y.S.2d 471 (N.Y. 1993); *In re Church Of St. James The Less*, 888 A.2d 795 (Pa. 2005); *Foss v. Dykstra*, 342 N.W.2d 220 (S.D. 1983); *Fairmount Presbyterian Church, Inc. v. Presbytery of Holston of Presbyterian Church of U. S.*, 531 S.W.2d 301 (Tenn. Ct. App. 1975); *Norfolk Presbytery v. Bollinger*, 201 S.E.2d 752 (1974).

4. *McCree v. Walker*, 101 S.W.3d 276 (Ark. 2003); *Bethel AME Church of Newberry, Florida v. Domingo*, 654 So. 2d 233 (Fla. Dist. Ct. App. 1st Dist. 1995); *Marich v. Kragulac*, 415 N.E.2d 91 (Ind. Ct. App. 1981); *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810 (Iowa 1983); *Nolynn Ass'n of Separate Baptists in Christ v. Oak Grove Separate Baptist Church*, 457 S.W.2d 633 (Ky. 1970); *Lamont Community Church v. Lamont Christian Reformed Church*, 777 N.W.2d 15 (Mich. 2009); *Tea v. Protestant Episcopal Church in Diocese of Nevada*, 610 P2d 182 (Nev. 1980); *Presbytery of Bismarck v. Allen*, 22 N.W.2d 625 (N.D. 1946); *Ohio Southeast Conference of Evangelical United Brethren Church v. Kruger*, 243 N.E.2d 781 (Ohio 1968); *First English Lutheran Church of Oklahoma City v. Bloch*, 159 P2d 1006 (Ok. 1945); *Fire Baptized Holiness Church of God of Americas v. Greater Fuller Tabernacle Fire Baptized Holiness Church*, 475 S.E.2d 767 (S.C. Ct. App. 1996); *Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.*, 552 S.W.2d 865 (Tex. Civ. App. Texarkana 1977); *Original Glorious Church of God In Christ, Inc. of Apostolic Faith v. Myers*, 367 S.E.2d 30 (1988).

States not expressly adhering to either *Watson* or *Jones* offer a hodgepodge of approaches to the issue. Connecticut, New Jersey, North Carolina, and Wisconsin have concluded that the two methods should be melded together. *Rector, Wardens and Vestrymen of Trinity-Saint Michael's Parish, Inc. v. Episcopal Church in Diocese of Connecticut*, 620 A.2d 1280 (Conn. 1993); *Kleppinger v. Anglican Catholic Church, Inc.*, 715 A.2d 1033 (N.J. Ch. Div. 1998); *Harris v. Matthews*, 643 S.E.2d 566 (N.C. 2007); *Wisconsin Conference Bd. of Trustees of United Methodist Church, Inc. v. Culver*, 627 N.W.2d 469 (Wisc. 2001). Kansas has not spoken on the matter, although the federal district court applying Kansas law has ruled in schism cases as to which faction was the "true representative" of the religion as it existed before the schism. *See, e.g., Church of God in Christ, Inc. v. Stone*, 452 F. Supp. 612 (D. Kan. 1976). Rhode Island has taken a similar approach to Kansas in at least one case when it evaluated witnesses' "personal conduct in connection with the religious observances" of the faith and the "rituals" followed by the priests. *St. Michael's Ukrainian Greek Catholic Church of Woonsocket v. Bohachewsky*, 196 A. 796 (R.I. 1938). Massachusetts selects one approach or the other on a case-by-case basis. *Episcopal Diocese of Massachusetts v. Devine*, 797 N.E.2d 916 (Mass. 2003).

3. Under Either Approach, a State Court May Not Insert Itself into Ecclesiastical Matters in Resolving a Property Dispute

Regardless of whether a jurisdiction has adopted the "neutral principles" or "compulsory deference" doctrine, the First Amendment severely circumscribes the role that civil courts may play in resolving church

property disputes. *Hull*, 393 U.S. at 449. If any resolution of the dispute requires inquiry into ecclesiastical matters such as religious discipline, faith, internal organization, or ecclesiastical rule, custom, or law a civil court may not intervene. *Milivojevich*, 426 U.S. at 714.

Although this Court in *Jones* did not expressly overrule *Watson*, the majority of the Court sharply criticized the *Watson* approach, particularly the increased likelihood that compulsory deference would lead to First Amendment violations. This Court rejected the dissent that would have required compulsory deference in all cases, explaining that compulsory deference *increased*, not decreased, the likelihood that courts would become deeply entangled in ecclesiastical matters:

> The dissent suggests that a rule of compulsory deference would somehow involve less entanglement of civil courts in matters of religious doctrine, practice, and administration. Under its approach, however, civil courts would always be required to examine the polity and administration of a church to determine which unit of government has ultimate control over church property. In some cases, this task would not prove to be difficult. But in others, the locus of control would be ambiguous, and "[a] careful examination of the constitutions of the general and local church, as well as other relevant documents, would be necessary to ascertain the form of governance adopted by the members of the religious association." In such

cases, the suggested rule would appear to require a searching and therefore impermissible inquiry into church polity." The neutral principles approach, in contrast, obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes.

The dissent also argues that a rule of compulsory deference is necessary in order to protect the free exercise rights "of those who have formed the association and submitted themselves to its authority." This argument assumes that the neutral-principles method would somehow frustrate the free-exercise rights of the members of a religious association. Nothing could be further from the truth. The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational

> church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

Jones, 443 U.S. at 605-06 (citations omitted). Therefore, while not eliminating the compulsory deference approach as an option in "simple" cases, this Court made it quite clear that the approach is untenable when the case cannot be resolved without extensive examination of church government. *Id.*

4. The Compulsory Deference Rule *Requires* State Courts to Do What This Court Has Forbidden: Entangle Themselves in Questions of Ecclesiastical Government

The problem that this Court warned against in *Jones* regarding compulsory deference has persisted in those states adhering to the doctrine. Courts applying *Watson must* explore matters of church governance surrounding the relationship between the local church and the denomination, despite this Court's admonitions against doing so.

Examples of these forays into church government and doctrine abound. For example, New Jersey has examined the formal or direct ties between the local church and the denomination, especially those indicating subservience or, on the other hand, independence of the local church. *John Chrysostom Greek Catholic Church of Pittsburgh v. Elko*, 259 A.2d 419, *cert. denied*, 399 U.S. 920 (1969), *Karoly v Hungarian Reformed Church*,

91 A. 808 (N.J. 1914), *aff'd without op.* 93 A 1085 (N.J. 1915). In Iowa, a local church holding title to church property voted to disassociate from the Presbyterian hierarchy. *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810, 816 (Iowa 1983). The court refused to hear the local church members' arguments that their church was ecumenical, concluding that to do so "would require an impermissible inquiry into doctrine." *Id.* at 817. However, the court intensely examined governing documents and doctrines of the Presbyterian church to support its finding that the church was hierarchical. *Id.* Despite the local church holding clear title, the court found an implied trust in favor of the national Presbyterian church and gave it the property. *Id.*

Other states have delved even more deeply into ecclesiastical matters. Michigan has established a "living relationship test" which closely examines "whether the local organization accepted ministers appointed by diocesan executives, regularly sent delegations to denominational convocations, received financial assistance from the general church, or made payments to the funds of the general church." *Kendysh v. Holy Spirit Byelorussian Autocephalic Orthodox Church*, 683 F. Supp. 1501, 1511 (E.D. Mich. 1987) (applying Michigan law). Texas courts applying the rule have made determinations regarding which faction of a local congregation represents the "true church." *Schismatic and Purported Casa Linda Presbyterian Church v. Grace Union Presbytery, Inc.*, 710 S.W.2d 700, 707 (Tex. Ct. App. 1986). In Arkansas, the state courts resolved a dispute regarding who was the rightful pastor of a church. *McCree v. Walker*, 101 S.W.3d 276, 277 (Ark. App. 2003). In doing so, the courts rejected a Baptist church

doctrine known as "silencing," in which a church member is stripped of power to vote on church affairs. *Id.*

Courts purportedly applying the *Watson* compulsory deference rule are caught in a Catch-22. By examining matters of church governance and doctrine to ascertain its structure, they directly violate this Court's central First Amendment principle that civil courts should not become entangled in matters of ecclesiastical government. Before concluding which body must be deferred to, they must dissect, evaluate, analyze, and rule upon questions of church government, religious doctrine, and other ecclesiastical matters.

5. As With Other States Applying the *Watson* Rule, the State Court Entangled Itself in Ecclesiastical Matters Here

Washington State courts adhere to the *Watson* compulsory deference doctrine, and as has happened in many cases applying the compulsory deference approach, the court here entangled itself in ecclesiastical matters. In fact, the Washington Court of Appeals here tacitly admitted it rested its decision upon ecclesiastical interpretation. The court ruled not on the issue of which entity held the property in question, but on the issue of whether the local church or the Classis was entitled to determine who was a church member. *Choi v. Sung*, 225 P.3d 425, 432 (Wash. App. 2010). It then said that doctrinal principles governed which congregation owned the property. *Id.*

The *Choi* opinion here is rife with findings, both implicit and explicit, on doctrinal matters. For example, the court found that "Although the PCUSA is a different

denomination than the CRCNA, the record demonstrates that Presbyterian and Christian Reformed Churches share common historical roots and are fairly similar in terms of doctrine and governance." *Id.* at 428 n.3. The court found that "The Classis, *following church policy and rules of governance*, directed the Classis Interim Committee (CIC) to investigate the dispute between Sung and the ousted congregation." *Id.* at 429 (emphasis added). The court did not explain how it knew that the Classis had followed church policy and governance in so doing. The court also noted that

> To be affiliated with the CRCNA, a church must agree to certain rules in the "Church Order and Rules for Synodical Procedure." One rule requires the Classis or Synod (the assembly above the Classis) to resolve disputes concerning ecclesiastical matters. The churches must agree that the Classis or Synod rulings are binding on them, unless those rulings "conflict with the Word of God."

Id. The court concluded that the Classis' ruling was binding on Sung, but did not explain how determined that it did not conflict with the Word of God. *Id.* at 433.

The Court of Appeals was merely echoing the trial court's numerous findings on ecclesiastical matters. The trial court found that "there was no evidence presented that the Classis decision on these matters was contrary to the Word of God." Appendix at 26a. It also found that Rev. Sung's independent church governance was "largely not harmful to the general church function."

Id. at 23a. It found that "the Reformation, which gave birth to the CRCNA, was largely about governance." *Id.* at 29a.

Also as predicted by this Court in *Jones*, the entanglement in ecclesiastical matters here resulted from a complex factual record. The trial court found, and the Court of Appeals acknowledged, that the New Hope CRC bore characteristics of both congregational and hierarchical churches:

> Here, the trial court's finding of fact determining whether New Hope CRC was hierarchical or congregational is somewhat equivocal. The finding states that "[t]here was testimony that [the church] is a blend, and that is probably true, but [the church] is clearly more congregational." What follows that statement is an explanation by the trial court that the congregation had to follow "certain rules or concepts" in order to affiliate with the CRCNA.

Id. at 432. The Court of Appeals also acknowledged that New Hope CRC conducted its church affairs as if it were congregational. *Id.* at 433. However, the court ultimately rejected the local church policy and doctrine in favor of the statements of policy and doctrine located in documents produced by the CRCNA. *Id.*

The state court here entangled itself in ecclesiastical matters by resolving issues of church doctrine and practice. In relying on *Watson* and rejecting the neutral principles of law approach, it resolved a property dispute on the basis of ecclesiastical principles, which is forbidden by this Court.

C. CONCLUSION

As this case makes clear, state courts cannot avoid becoming entangled in ecclesiastical matters when applying *Watson*. Examinations of church policy, practice, doctrine, and governance inhere in any discussion of the compulsory deference doctrine.

This Court now has decades of case law with which to compare the efficacy of the two doctrines. The time has come for this Court to reexamine *Watson* and determine whether it is permissible under the First Amendment to allow the compulsory deference doctrine to be applied in church property disputes.

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Respectfully submitted,

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